Public Comment
Low-Income Water Rate Assistance Program
Deadline: 2/1/19 by 12 noon

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Ms. Jeanine Townsend
Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
P. O. Box 100 Sacramento, California 95812-2000
Via: commentletters@waterboards.ca.gov

Re: COMMENTS - Options for Implementation of a Statewide Low-income Water Rate Assistance Program

Dear Ms. Townsend:

We are legal counsel to the Public Water Agencies Group (the "Group"), an association of 15 public agency water suppliers situated in Los Angeles County.[1] In addition, the following mutual water companies are also represented in this letter: Bellflower-Somerset Mutual Water Company, Montebello Land and Water Company, Rubio Cañon Land and Water Association, Sunny Slope Water Company and Valencia Heights Water Company, and those companies are included in the reference to the "Group" set forth herein. The Group's comments to the State Water Resources Control Board's draft report on "Options for Implementation of a Statewide Low-Income Water Rate Assistance Program" (the "Report") are set forth below.

The Group appreciates the State Water Board's staff's work on the Report, and their consideration of stakeholder input on the important issues the Report addresses. Although, as noted below, there are some issues that require further consideration and, in some cases, revision, the Group is generally satisfied with the Report, and is pleased the Report does not recommend generating the necessary revenue by placing a fee or tax on consumers' water bills.

However, the Group is particularly concerned in two areas. First, the Group is concerned with the administrative burden that may be placed on water suppliers under any W-LIRA program that is eventually implemented. While the Report recommends options other than direct

[1] The Group consists of Crescenta Valley Water District, Kinneloa Irrigation District, La Habra Heights County Water District, La Puente Valley County Water District, Main San Gabriel Watermaster, Palmdale Water District, Pico Water District, Quartz Hill Water District, Rowland Water District, San Gabriel County Water District, San Gabriel Valley Municipal Water District, South Montebello Irrigation District, Three Valleys Municipal Water District, Valley County Water District and Walnut Valley Water District.

credits against water supplier bills, it is not clear exactly what, if any, administrative actions must be taken by water suppliers. In light of this uncertainty, the Group is concerned about the costs water suppliers may incur in administering the W-LIRA program, particularly if those administrative costs will not be funded by the state, as well as administrative and billing changes that may need to be implemented.

Secondly, the Group is concerned about the potential for persons to receive benefits under the W-LIRA program, but not use those benefits for water bill payments and then take advantage of the account balance reduction and/or delayed service termination provisions that will take effect under SB 998. It would be possible for a recipient to take advantage of the system by receiving benefits under the W-LIRA program, put those benefits to other uses and not pay their water bill, utilizing SB 998 to then reduce their water bill and possibly delay any termination of their service for many months. To the extent possible, benefits under the W-LIRA program should be linked to water bill payments, or other steps need to be included in the W-LIRA program to protect against manipulation of the system by W-LIRA recipients. Additionally, in enacting any required legislation to implement the W-LIRA program, the Legislature should also consider amendments to SB 998 to protect against such possible "double-dipping."

Our comments to specific chapters of, and appendices to, the Report follow.

Chapter 1: Why help households pay for drinking water service? The need for Low-Income Assistance in California

#1 Health and livelihood impacts

California is unique in many ways, including its weather, geography, economy and regulatory climate. California's water distribution system, and the laws and regulations that govern it, are also unique and are among the most protective in the country. Thus, we question the relevance of applying here cases of affordability and public health from Baltimore, Detroit and Pittsburgh, which differ greatly in many ways from California. Those cities and their respective states have laws and regulations that are different than those in California. Most relevant is that California has in place laws (e.g., SB 120) to allow tenants to place water service in their names if a landlord fails to pay the water bill, and SB 998, adopted just last year, will provide significant additional protections to all water customers when it comes to the termination of water service for a failure to pay.

The Report does not analyze the specific laws and regulations applicable in those other cities and states. Without such an analysis, using those cities as examples is effectively meaningless and does not provide a direct, "apples to apples" comparison.

More relevant to California is the significant use of bottled water. The Natural Resources Defense Council (NRDC) prepared a series of surveys since the 1990's that found that a significant number of persons in the United States, including California, with origins in Latin America and Asia, prefer bottled water to tap water. Similar studies have found that many lower income residents pay as much as 600 times more for bottled water than they would pay for an equal amount of tap water. Such use of bottled water as a primary drinking source has resulted in higher rates of tooth decay in low income populations because of the lack of fluoridation in the bottled water.

There are other dynamics at play in California that drive many residents with low incomes to choose more expensive options for their drinking water. Some are cultural, while others result from contaminated local supplies that cause distrust of tap water. The Group believes it is necessary to address the systemic issues that cause people to drink much more expensive bottled water. Focusing on those systemic issues will result in increased disposable income among those low income residents and reduce current health impacts like tooth decay, while allowing those residents to gain confidence in, and increase their use of, less expensive but safe drinking water from local sources.

#2 The rapidly-rising retail cost of drinking water

The Group acknowledges the price of water has increased over the past few years. Some of those increases are due to the need to replace aging infrastructure. However, the recent drought resulted in many water suppliers having to increase prices to generate sufficient revenues to meet overhead costs as a result of reduced consumption because when water sales decrease, fixed administrative and overhead costs must still be met. In addition, recent years have seen an unprecedented number of new regulations and statutory requirements that place increased compliance burdens and, thus, unfunded mandated costs on water suppliers. Such factors include, but are not limited to, the State Water Board's modified drinking water fees, mandatory water conservation, water loss audit requirements and new water quality standards. These operating cost increases are passed on to a water supplier's end users, usually through increased water rates. The Report should more explicitly recognize these increased operating costs that result from the actions of the State Water Board and Legislature.

Yet even with those cost increases, water rates for drinking water still are significantly less than the cost of bottled water, and people choosing the more expensive option by necessity need long-term investments in their local infrastructure so they can gain trust in their local water supply and reduce their costs as they shift to using local tap water. Such a shift should be encouraged and the Group therefore agrees that the alternative of raising revenues for the W-LIRA program from a meter tax would further increase water rates and/or charges in a regressive manner and place a further burden on low income and income limited residents. Such a tax would place a disincentive on the use of home-based drinking water.

#3- Comparable programs exist in other sectors

While comparable programs exist in the energy sector, special districts that provide water service, such as the Group's members, are limited by Proposition 218 to charging the cost of service and do not have the means to recover the lost revenue of subsidizing low-income customers. In addition, mutual water companies are limited by Public Utilities Code Section 2705 to charging their shareholders or members for water "at cost," a cost of service restriction similar to Proposition 218 on the public agency side. These limitations significantly restrict special district and mutual water company water suppliers from being able to offer their own low-income customer assistance programs, because subsidizing a low-income customer's bill with revenue derived from another ratepayer could give rise to a claim against a special district for violation of Proposition 218 and against a mutual water company for violating the provision of water "at cost" requirement. For special districts, that would mean costly litigation, the potential payment of the other party's attorneys' fees and the potential of refunding monies paid by customers, while a mutual water company would be subject to by the Public Utilities Commission, which would increase their operating costs.

As a final comment to this item, it would be helpful if a footnote was added to Table 2 on page 15 to identify the 24 urban public water suppliers that have W-LIRA programs in place.

Chapter 2: Program Design Scenarios: Eligibility, Benefit Level and Total Program Cost

Our comments to this chapter are relatively minor. In Table 5 on page 19, we believe the allocation of 75 gallons per day for outdoor use is too high when applied to lower income water users, many of whom reside in multi-unit apartments that use minimal outdoor water. That factor needs to be taken into consideration in the analysis set forth in Chapter 2.

Secondly, we recommend that Footnote 44 be deleted in its entirety. That footnote is unnecessarily insulting to water suppliers, as it implies without any support or justification that water suppliers would somehow "game the system" by manipulating rate setting, although it is not entirely clear from the text of the note what benefit a water supplier would derive from such conduct. Moreover, later in the note, the Report references water system representatives stating they would not engage in such "strategic rate setting." The Group believes Footnote 44 adds no substance to the Report, and may distract from some of the good points the Report makes.

Chapter 3: Revenue Collection Options

The Group supports a revenue collection program that does not rely on taxing meters or applying any additional fee to a commodity charge. While the recommended taxing of incomes of over $1 million is a possible partial solution, that source could be unreliable during economic slumps when the total earners in higher income brackets decline. Such reductions in the revenue needed to sustain the W-LIRA program must be planned for with a sustainable revenue source to backfill any such shortages when that contingency occurs. The Group has learned a possible alternative revenue source would be a tax on profits in industries that rely on government incentive programs, such as electric cars, solar energy, water conservation devices and practices (i.e. California friendly gardens), corporate relocations, as well as recycled and desalinated water related industries (i.e. engineering firms, filtration manufacturers), where the revenues funding the incentives are supported through income taxes applied to all income and property taxpayers. The rationale for such a tax is that it would equalize the tax contributions of lower income taxpayers who help subsidize those incentives, but themselves do not typically benefit from such incentives, which instead benefit persons and entities with higher incomes.

For example, during efforts to incentivize lawn replacement programs during the last drought, it was found that some of the primary beneficiaries of the $300 million incentive program were residents in the wealthy San Diego community of Rancho Santa Fe. Yet the funding behind those landscape incentives was derived through the taxpayers of the entire state and all property owners in the Metropolitan Water District of Southern California's service area. In addition to the high income residents who benefited, contractors under that program derived millions of dollars from it.

As for the other proposed component, the Group believes taxing bottled water is also an acceptable revenue source. While some would argue that the tax on bottled water is regressive, it is more similar to tiered water pricing that provides a disincentive for overuse. An added benefit to taxing bottled water is that will result in greater use of tap water and reduced use of bottled water, which, as mentioned above, has been shown to result in increased instances of tooth decay.

Chapter 4: Options for Benefit Distribution and Administrative Features of a Statewide Low-Income Ratepayer Assistance Program

Distributing the W-LIRA program benefit through water bills is problematic for reasons cited in the Report given that many renters, for example, would not be reached through this means. Also, we believe distributing the assistance through electrical providers will be very complicated and cumbersome in transmitting data from water suppliers to electrical providers. A further complicating factor is that water system boundaries generally do not align with an electrical provider's boundaries and there may be instances where one water supplier is served by two, or more, electrical providers, or where an electrical provider must obtain information from scores or even hundreds of separate water suppliers.

Based on the shortcomings of those other alternatives and despite the fact that payment through an Electronic Benefit Transfer (EBT) lacks a nexus to a recipient's water use, the Group supports an alternative where the benefit is distributed through the **existing** EBT program. However, care must be taken in structuring the W-LIRA program to ensure that opportunities to take advantage of the program and unduly exercise the rights for account balance reduction and delayed service termination provided under SB 998 are minimized.

Appendix A – Text of Assembly Bill 401, Dodd. Low-Income Water Rate Assistance Program:

- Note there is a stray "93" in the fourth line of the first paragraph of Appendix A.

Appendix C – Features of Existing Low-Income Ratepayer Assistance Programs:

- Table 5 – Benefit Types for Rate Assistance Programs in the U.S. (page 16) – in the "Fixed or Capped Credit" box, please add Walnut Valley Water District.

- Consolidation of financially unsustainable systems (page 19) – while the Group is generally supportive of consolidations of water systems under the right circumstances, consolidations can be very complicated and may be infeasible due to geographic, logistical and even political reasons. Those factors should be added to the discussion in this section.

Appendix G – Analysis of Revenue Collection Options:

- Collection Plan #5: Fee Levied on CWS Customer Bills (page 32) – the Group strongly concurs with the Report's recommendation not to pursue this collection alternative.

Appendix K – Community Water Systems:

- CWS Works with Landlords and Households (pages 48-49) – the Group strongly concurs with the Report's statement regarding the lack of information water systems have regarding tenants where the tenants are not named on the system's account. Water systems generally have no identification information on tenants, particularly in apartment settings. Thus, any alternative that is based on the water system's interaction with tenants is likely to be unworkable.

Appendix L –

- Disadvantages of Progressive Rate Structures for Indirect Affordability Assistance (pages 53-54) – in addition to the reasons stated in this section of the Report, there are other practical reasons why progressive rate structures may be difficult to implement, including significant implementation costs; the need to integrate any such new structure with the water system's billing system, which could include having to significantly upgrade or replace the entire billing system; and problems with Proposition 218 requirements when it comes to tiered pricing to disincentivize high water use. In addition, such structures may adversely impact revenue stability of water agencies, with a resulting adverse impact on the water supplier's ability to make necessary infrastructure investments.

- Page 56 – the Group is strongly opposed to direct state involvement on rate setting. Rate setting is a process that each water supplier must undertake in consideration of multiple factors, including water sources, water treatment requirements, infrastructure needs and other operational and administrative requirements and resulting costs. The rate setting process is best done at the local level and there are now constitutional safeguards in place both procedurally and substantively under Proposition 218 for public agency water suppliers and under applicable statutes for mutual water companies to ensure the rates set are justified by costs of service. State involvement in the process is not necessary and will end up in even more costs to the water systems and ultimately their customers. ***Rate setting is a local function and must stay a local function!***

CONCLUSION:

Thank you for the opportunity to provide the preceding comments. The Public Water Agencies Group has been following the AB 401 process from the outset and appreciates the effort that went into the Report that has been prepared. In particular, we appreciate the flexibility demonstrated in the revenue source and revenue collection alternatives. However, any alternatives that are eventually selected must take into account the administrative burden that will fall onto water suppliers under those alternatives.

Very truly yours,

James D. Ciampa

JDC/cc

cc: Public Water Agencies Group (via e-mail)